

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	5:17-cv-00825-SVW-FFM	Date	August 17, 2017
Title	<i>Ream Holdings, LLC v. 3R International Group, Inc. et al</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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N/A	N/A
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**Proceedings:** IN CHAMBERS ORDER REGARDING DEFENDANT ATTAN’S MOTION TO DISMISS [34]

Having read and considered the papers presented by the parties, the Court finds this matter suitable for determination without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing scheduled for August 21, 2017 at 1:30 p.m. is VACATED and OFF CALENDAR. The Court GRANTS Defendant Attan’s motion to dismiss without prejudice.

**I. Factual And Procedural Background**

Plaintiff Ream owns two parcels of land located in Yuma, Arizona. Complaint, Dkt. 2, ¶ 1. The land contains a large warehouse. When plaintiff took possession of the land, the warehouse had an existing tenant, Dow Management, LLC. *Id.* at ¶¶ 53, 54, 63. Dow Management operated an intermediate facility to treat and process CRTs (cathode ray tubes) for recycling. *Id.*

Defendant Attan contracted with and paid Dow to process and treat CRTs under a program overseen by the State of California’s Covered Electronic Waste Recovery and Recycling Program (“CEW”). *Id.* at ¶¶ 50-52. In early April 2013, Dow abandoned its business and later filed certificates of cancellation and dissolution. *Id.* at ¶ 66. When Dow abandoned the property, it allegedly failed to process and treat all the CRTs that had been delivered. Plaintiff contends that this includes CRTs Defendant Attan delivered to Dow for processing treatment. *Id.* at ¶¶ 52, 53.

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Plaintiff then filed this complaint to sue Dow, Attan, and multiple other Doe Defendants for negligence, trespass, public and private nuisance, and violations of California Business & Professional Code §§ 17200, et seq. *Id.* Defendant Attan filed a motion to dismiss all claims in response.

**II. Legal Standard**

Under Rule 12(b)(6), the Court may dismiss a complaint if it fails to “state a claim upon which relief can be granted.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); see F.R.C.P. 12(b)(6). In considering a motion to dismiss, courts must accept as true all allegations in the complaint and construe them in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 545.

**III. Plaintiff Fails to State a Cause of Action for Negligence with Regard to Defendant Attan**

To properly assert a negligence claim against Defendant Attan, Plaintiff Ream is required to allege that Defendant Attan owed a legal duty to Plaintiff, breached that legal duty, that Defendant Attan's negligent actions are the cause of Plaintiff's damages, and also allege that Plaintiff Ream suffered damages. See, California Civil Code § 1714(a), and *Ahern v. Dillenback*, 1 Cal.App.4th 36 (1991).

Plaintiff pleads that Defendant Attan owed the State of California a duty under the CalRecycle program, claiming that this duty now extends to Plaintiff to ensure that the CRTs shipped to Dow did not remain on Plaintiff's property. Complaint, ¶¶ 84-85. However, Plaintiff has not shown what authority or contract places this duty on Defendant Attan. There is no allegation of a contract between Plaintiff and Defendant Attan. Conclusory allegations of the existence of a duty are not enough.

Plaintiff also claims that Defendant Attan owes Plaintiff a legal duty by directing the Court to consider California Code of Regulation, 22 § 66273.72(3)(A), which provides that a "universal waste handler who does not conduct further treatment on CRTs pursuant to § 66273.73 or send or take CRTs to another universal waste handler for treatment pursuant to § 66273.73 shall: (A) Ensure that the CRTs are recycled or disposed as required by this section." But enforcement of § 66273.73 rests with the California Department of Toxic Substance Control or a “local public officer” under § 66272.10. No private rights of enforcement exists and the act itself does not create a legal duty. Therefore, the Court grants Defendant Attan's motion to dismiss the negligence claim for failure to state a claim.

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**IV. Plaintiff Fails to State a Cause of Action for Trespass, Public Nuisance, or Private Nuisance with Regard to Defendant Attan**

Trespass is the unlawful interference with the possession of real property. *Staples v. Hoefke*, 189 Cal.App.3d 1397, 1406 (1987). The fundamental element of a trespass claim is that the entry onto the property occurred without permission of either the owner or tenant in possession. *Cassinov v. Union Oil Co.*, 14 Cal.App.4th 1770, 1780 (1993).

With any private or public nuisance claim brought by a private entity, consent to the entry or activity is an affirmative defense to the asserted claim for nuisance. *Beck Development Co. Southern Pacific Transportation Co.*, 44 Cal.App.4th 1160, 1217 (1996).

Plaintiff Ream admits that Dow was a lawful tenant of the property under a commercial lease entered into on October 1, 2012. Plaintiff also admits that Defendant Attan delivered the CRTs to Dow pursuant to arrangements made with Dow to manage, process, and treat the CRTs. Defendant’s CRT deliveries to Dow occurred with permission and consent by the tenant in possession of the land. Neither Defendant Attan nor its goods entered the land without consent. The trespass and nuisance actions fail to state claims for which this Court can grant relief and are dismissed.

**V. The Court Dismisses Plaintiff’s Claim Regarding California Business & Professions Code §§ 17200, et seq., For Failure to State A Claim**

Rule 8 mandates that a complaint include a “short and plain statement of the claim,” Fed. R. Civ. P. 8(a)(2), and that “each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). A district court may dismiss a complaint for failure to comply with Rule 8 where it fails to provide the defendants fair notice of the wrongs they have allegedly committed. *See McHenry v. Renne*, 84 F.3d 1172, 1178–80 (affirming dismissal of complaint where “one cannot determine from the complaint who is being sued, for what relief, and on what theory, with enough detail to guide discovery”). Rule 8 requires more than “the-defendant-unlawfully-harmed-me accusation[s]” and “[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

Plaintiff’s fifth cause of action is a conclusory pleading and does not specifically allege how Defendant Attan acted in violation of the entirety of §§ 17200, et seq., of the California Code of Business.

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The complaint simply states that Defendant failed to make other arrangements for the CRTs that were delivered to Dow based on a contractual relationship. There is no allegation as to how this constitutes specifically unlawful, unfair, or fraudulent business practices outside of conclusory statements using the statutory text itself. Therefore, the Court dismisses this claim without prejudice.

**VI. Conclusion**

For the aforementioned reasons, the Court GRANTS the motion to dismiss without prejudice.

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